STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
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TO PARTIES OF RECORD IN APPLICATION 12-03-001

This is the proposed decision of Administrative Law Judge (ALJ) Richard W. Clark, previously designated as the presiding officer in this proceeding. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.3(c)(4).)

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Clark at rwc@cpuc.ca.gov and assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF ALJ CLARK** (Mailed 8/9/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017 (U39E).	Application 12-03-001 (Filed March 1, 2012)

(See Appendix B for a List of Appearances)

DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO OFFER ECONOMIC DEVELOPMENT RATE TARIFF OPTIONS

TABLE OF CONTENTS

DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO OFFER ECONOMIC DEVELOPMENT RATE TARIFF OPTIONS

1. Summary

This decision authorizes Pacific Gas and Electric Company (PG&E) to offer both a Standard and an Enhanced Economic Development Rate (EDR) tariff subject to certain ratepayer protections. The goal of this subsidized tariff is to retain load or to stimulate new or expanded load within PG&E's service territory. The tariff will be available to non-residential customers, both bundled service and unbundled (direct access and Community Choice Aggregation). In order to be eligible for the discounted tariff, the customer must have at least 200 kilowatts of new or existing load anywhere in PG&E's service territory and the customer must declare under penalty of perjury that but for the electric rate discount provided by the EDR tariff option, they would either move their existing operations out of PG&E's service territory, not expand their existing business operations in PG&E's service territory, or decide not to locate new business operations in PG&E's service territory.

The Standard EDR option provides a 12% discount during each year of a contract that expires upon California Public Utilities Commission (CPUC or Commission) adoption of a decision in PG&E's 2017 General Rate Case (GRC) application. The Standard EDR discount of 12% will be reflected on the monthly electric bills of participating businesses.

The Enhanced EDR option provides at least a 12%, and no more than a 35%, discount during each year of a contract that expires upon Commission adoption of a decision in PG&E's 2017 GRC. The Enhanced EDR discount will be available to businesses located, locating or expanding in cities or counties in PG&E's service territory with annual unemployment rates of more than 125% of

the previous year's statewide average. The implicit goal of tying the Enhanced EDR to the unemployment rate is to help energy intensive businesses stimulate or retain jobs. Because there is a substantial discount associated with the Enhanced EDR, the discounts will be disbursed on an annual basis in the form of a refund. The ex-post annual refund process ensures that each Enhanced EDR participant receives a discount of no less than 12% and no more than 35% each year; the amount of the discount cannot cause the rate charged to be less than that required to equal the marginal cost of providing the Enhanced EDR customer with its electric service plus the payment of all non-bypassable charges (NBCs).[1]

This decision also adopts rate payer protection provisions that, among other things, guard against free-riders, require energy efficiency and demand side management reduction targets, and establish reporting requirements relative to program costs, the numbers of jobs created or retained, and the wages and benefits paid to those workers.

This proceeding is closed.

2. Background

Section 740.4(h) of the Public (Pub.) Utilities (Util.) Code requires the California Public Utilities Commission (CPUC or Commission) to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs."

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[1] Non-bypassable charges are transmission charge, Public Purpose Program Charge, Nuclear Decommissioning Charge, Competition Transition Charge, New System Generation Charge, Department of Water Resources bond charge, and the Power Cost Indifference Amount applicable only to DA and CCA customers.

2.1. History of Economic Development Rate (EDR) Tariffs

In 2004, PG&E filed Application (A.) 04-06-018 for adoption of an EDR. Southern California Edison Company (SCE) had filed its own EDR application (A.04-04-008) two months prior. The Commission consolidated the two applications, which were eventually resolved in Decision (D.) 05-09-018. The adopted rate included an enrollment cap of 100 megawatts (MW), a sunset date of December 31, 2009 (i.e., no new contracts were to be executed after this date) and a 5-year declining discount schedule of 25-20-15-10-5 percent. Customers seeking the EDR were required to sign an affidavit attesting to the fact that "but for" this incentive rate, either on its own or in combination with a package of incentives made available to the customer from other sources, the customer would not have: (1) located operations or added load within the State of California; or (2) retained load within the State of California.

In D.05-09-018, D.06-05-042, D.07-09-016, and D.07-11-052, the Commission established and then modified a price floor below which any EDR customer's revenues could not fall. Initially, in D.05-09-018, the price floor was set to include "marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation."[2] The Commission granted rehearing of that decision in D.06-05-042, and beginning in 2007, with D.07-09-016, Non-Bypassable Charges (NBCs) were added to the price floor.

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[2] D.05-09-018, mimeo, at 26. The marginal costs in these floor prices were based on the most recent marginal costs then in effect and were frozen for the life of the contract.

In late 2009, SCE and PG&E filed applications (A.09-10-012 and A.09-11-010, respectively) to extend the EDRs, which were then set to close for new applicants at the end of 2009. In December 2009, the Commission's Executive Director extended SCE and PG&E's EDRs so as not to expire on December 31, 2009, pending final decisions on A.09-10-012 and A.09-11-010. The Commission approved the settlement of these applications in D.10-06-015.

Pursuant to D.10-06-015, each utility's EDR was extended to December 31, 2012 and, among other things, the incentive (for new contracts) was revised from the 25-20-15-10-5 percent schedule to a maximum 12% per year for five years and the floor price provisions remained in effect.

2.2. History of this Proceeding

On March 1, 2012, PG&E filed A.12-03-001, its *Application for Approval of Economic Development Rate for 2013–2017* (Application). On March 8, 2012, Resolution ALJ 176-3290 preliminarily determined that this proceeding was ratesetting and that hearings would be necessary.

On April 4, 2012, protests were timely filed by the Division of Ratepayer Advocates (DRA), the Merced Irrigation District and the Modesto Irrigation District (collectively MerMod ID), the Alliance for Retail Energy Markets (AReM), the Energy Users Forum (EUF), the City and County of San Francisco (CCSF), Marin Energy Authority (MEA), the San Joaquin Valley Power Authority (SJVPA), the Greenlining Institute (Greenlining), and The Utility Reform

Network (TURN), and a Response was filed by the Local Government Parties (LGP).[3]

PG&E filed a Reply on April 13, 2012. On April 11, 2012 a *Notice of Prehearing Conference* was issued by the Chief Administrative Law Judge (CALJ) followed by a Notice of Workshop issued on June 18, 2012 and a second *Notice of Prehearing Conference* issued on July 10, 2012. On May 8, 2012 the assigned Commissioner and the assigned Administrative Law Judge (ALJ) presided over two public participation hearings (PPHs) held at the Fresno City Hall in Fresno, California. On May 17, 2012, a prehearing conference (PHC) took place in San Francisco, California to establish the service list, discuss the scope, and develop a procedural timetable for this proceeding. A workshop was held on July 6, 2012 to clarify the Application and understand the issues. On July 23, 2012, a second PHC was held to discuss a common outline of the issues presented by the Application. A scoping memo was issued on August 7, 2012. Evidentiary hearings were held on November 27 and 28, 2012. On December 11, 2012, the ALJ issued a ruling directing Parties to supplement the record, extending the dates for submitting Opening Briefs to January 8, 2013, and for submitting Reply Briefs to January 18, 2013. On January 18, 2013, the City of Oakland (Oakland) filed and served a Motion for Party Status and concurrently filed its Reply Brief. On February 11, 2013 the ALJ issued a ruling granting

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[3] The Local Government Parties is comprised of the City of Fresno, California, together with the California Counties of Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Shasta and Tehama, and the California Cities of Atwater, Avenal, Chowchilla, Clovis, Coalinga, Colusa, Corning, Dinuba, Huron, Kerman, Kingsburg, Firebaugh, Fowler, Lemoore, Livingston, Madera, Mendota, Orange Cove, Red Bluff, Reedley, Sanger, San Joaquin, Selma, Shafter, and Stockton.

Oakland's Motion for Party Status, setting aside submission of the matter until a future ruling, and allowing until February 15th for Parties to file further reply briefs addressing the issues contained in Oakland's January 18, 2013 Reply Brief. The matter was submitted pursuant to the ALJ's ruling dated May 13, 2013.

3. Overview of EDR

Construction of customer retention, attraction and expansion programs can be fairly said to be a classic Hobson's choice – a retention, attraction or expansion customer who pays at least the marginal cost of service plus NBCs, or no customer at all.

Phase 1 of our General Rate Case (GRC) proceedings establishes the total revenue requirement[4] of utilities. Phase 2 of our GRC proceedings establishes the rates that each ratepayer must pay in order to ensure that the utility recovers its total revenue requirement. We find it helpful for purposes of this discussion to divide electric rates into three component parts that, when added together, equal the total rate paid by a ratepayer pursuant to our Phase 2 GRC determinations:

1. Marginal costs of providing service
2. NBCs
3. Headroom

[4] The revenue requirement is comprised of the costs of operations and maintenance, depreciation, taxes and return on rate base. Rate base is the book value, after depreciation, of the generation, transmission and distribution infrastructure owned and operated by the utility.

Each ratepayer's share of paying the utility's revenue requirement increases when the number of ratepayers decreases, particularly when the departing customer is a large customer. PG&E contends in its application that the adverse impacts caused by departing ratepayers can be softened by well-constructed EDR programs that retain customers (retention customers), attract new customers (attraction customers) or incent existing customers to expand (expansion customers), as long as the programs require that each of the retention, attraction and expansion customers pays a rate that equals or exceeds the marginal costs of providing them with service, plus the payment of all NBCs. While this approach results in a shortfall in the recovery of rates (aka non-recovery of the headroom portion of the rates), we believe that, on balance, it is better to have a large commercial or industrial customer who pays the marginal costs of receiving services, plus NBCs, than no customer at all - particularly when that ratepayer provides jobs for PG&E ratepayers.

In providing the discounted tariff, the shortfall in the recovery of the headroom portion of the rates can only be made up to meet PG&E's overall revenue requirement from one of three sources: (1) the shortfall can be recovered from shareholders, (2) customers who do not participate in the EDR program, or (3) the EDR program participants themselves. There are obvious trade-offs to all three choices. As discussed further below, we adopt an approach that spreads the recovery of the shortfall to non-participating customers. To contain these cost shifts, PG&E will employ a contribution to margin (CTM)[5] analysis to

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[5] CTM is the difference between the average rate paid by a customer and the marginal cost of serving that customer (D.96-08-025, at 5.)

determine that the discount the customer is given does not cause the participating customer's rates to fall below the price required to ensure it has paid the full marginal costs of providing it with electricity,[6] plus NBCs. We further limit non-participating customer's exposure to cost shifts by constraining the amount of the shortfall and by adopting a participation cap of 200 MW on the entire program. These protections, plus additional provisions described below, results in an acceptable balance between creating a successful EDR program, which has economic benefits, and minimizing the burden on non-participating customers. Overall, we find that the adoption of the EDR will result in just and reasonable rates for non-participating ratepayers.

We now discuss specific aspects of our rationale in adoption of the EDR program.

3.1. Need for the Proposed EDR Program

PG&E asserts its:

> EDR proposal is designed to enhance California's competitiveness as a business location for companies to create or retain jobs and will provide benefits for California residents generally and PG&E's customers specifically. PG&E's EDR proposal will help local, regional and state economic development partners compete with other states to attract or retain qualifying businesses; increase the Company's flexibility to respond to local economic conditions; and thereby provide more certainty for PG&E's customers and communities.[7]

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[6] Price points set at or above marginal costs result in "positive CTM." Price points set below marginal costs result in "negative CTM."

[7] PG&E Application, at 1.

DRA asserts, and virtually all parties agree,

> … there are two generic sources of ratepayer risk associated with the EDR programs: (1) the cost of the discount itself, if the participating customer is, in fact, a "free-rider" and (2) the possibility that the revenue from the customer might be insufficient to cover changes in the marginal cost over the contract term, causing the CTM to become negative.[8]

No party disagrees with PG&E's fundamental assertions that economic conditions in California have not substantially improved since D.10-06-015 was adopted. California continues to have a high unemployment rate, although this trend is starting to improve. The high cost of doing business in California is having a negative impact on the State's ability to attract and keep high-paying energy-intensive jobs, such as manufacturing. Energy costs are a key factor in where some businesses decide to locate. Compared to PG&E's major out-of-state competing utilities, PG&E has the most expensive rates for the large-load industrial sector.

Numerous federal, state and local elected officials, and substantial numbers of private citizens have voiced their support for PG&E's application both in writing and at the May 8, 2012 PPHs.

The proposed EDR options would be intended to attract, retain and encourage expansion of companies, and reduce unemployment in PG&E's service territory. The proposed EDR would maintain some elements of the most recent iteration of the EDR program, namely:

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[8] DRA Direct Testimony, at 1-4.

- PG&E shareholders would make no contribution to the program costs.
- An EDR eligible customer would be a non-residential customer with at least 200 kilowatts (kW) of new or existing load.
- The EDR options would apply to only that portion of the customer's electric load that is either added to or not removed from PG&E's system.

3.2. Proposed Changes to the Most Current EDR Program

PG&E asserts that the EDR program authorized by D.10-06-015 failed to continue attracting participants because the headroom[9] available for offering the EDR incentive has been reduced since the 2005 adoption of Schedule ED by:

- Inclusion of the NBCs, as required by D.07-09-016.
- New generation and distribution marginal costs adopted in the 2007 GRC, which were substantially higher, driven by historically-high natural gas prices, than the previous 1996 marginal costs.
- Declining generation rates-resulting in declining generation revenue and elevated generation marginal costs in the floor price.[10]

This application seeks to establish an EDR discount effective January 1, 2013 through December 31, 2017. The Application is comprised of a Standard EDR option and an Enhanced EDR option. Both options would be available to business customers or potential business customers with credible out-of-state

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[9] The difference between rates and the floor price.

[10] Application, at 3-4.

business location options under active consideration, or who would otherwise close their business.

As proposed, the Standard EDR option would provide a 5-year, 12% reduction in the customer's otherwise applicable commercial or industrial tariffed rate schedule, net of taxes. The Enhanced EDR option would provide a 5-year, 35% reduction in the customer's otherwise applicable commercial or industrial tariffed rate schedule, net of taxes. A PG&E customer would qualify for the Enhanced EDR option if that customer is located in a PG&E served county with unemployment rates of at least 125% of the previous year statewide average.

PG&E, with the full support of the LGP, seeks substantial changes to the fundamental components of all EDR programs previously authorized by the Commission. The newly proposed EDR would, among other things:

- Eliminate the floor price that was established in D.05-09-018 and modified in D.07-09-016.
- Eliminate the after-the-fact annual review and true-up that ensures that the discounted rates charged remained above the floor price.
- Remove the 200 MW participation cap required in D.10-06-015.
- Remove the requirement that a qualifying EDR customer's billed electricity costs must account for at least 5% of the customer's actual or estimated operating costs, less the cost of actual or estimated raw materials.
- Eliminate the requirement that the Office of California Business Investment Services (CalBIS) conduct an independent evaluation of a customer's eligibility for EDR.
- The rate reductions would be set for the term of the agreement and would not be subject to modification.

- The calculated discount would be applied to the distribution charge component of the rate, and the distribution charge would be allowed to go negative in order to provide the full EDR discount to the customer
- PG&E shareholders would have no responsibility for ensuring that the program provides any CTM to the company.

In essence, PG&E and the LGP have asked the Commission to approve a new approach to EDR that creates higher incentives for certain customers while eliminating a large number of the ratepayer risk mitigation components of the previous EDR programs. The LGP proposal goes even further than PG&E's by proposing the elimination of the requirement for applicants to certify, under penalty of perjury, that if not for the EDR incentive, the business would be closing, moving from, or not expanding within PG&E's territory.

Side by Side Comparison of PG&E's Most Recent EDR Provisions to PG&E Proposed Changes

PG&E MOST RECENT EDR PROVISIONS	PG&E PROPOSED EDR PROVISIONS
Standard 12% Discount, 5-year term	Standard 12% Discount, 5-year term
No enhanced discount option	Enhanced 35% discount option, 5-year term, if customer is located in county with 125% of the previous year statewide average unemployment
Floor price based on Marginal Cost + NBC Rate Components, enforced annually, ex ante and ex post	Eliminated
CTM cannot be negative in any year	CTM, based upon the marginal cost of generation, distribution and transmission, projected to be positive over 10 years
Annual ex post true-up and back billing to recover negative CTM from customer	Eliminated
Distribution discount constrained by marginal cost floor enforced annually	Eliminated
Generation discount constrained by marginal cost floor enforced annually	Eliminated

PG&E MOST RECENT EDR PROVISIONS	PG&E PROPOSED EDR PROVISIONS
No discounting of NBC Rate Components (including Transmission)	No discounting of NBC Rate Components
No PG&E shareholder participation	No PG&E shareholder participation
200 MW cap	Eliminated
Approval of applicants by CalBIS required	Voluntary provision of information to CalBIS
Limit participation to customers whose energy costs are at least 5% of operating costs	Eliminated
Implement with an affidavit provision	Implement with an affidavit provision
Require PG&E to conduct energy audit of the applicant's facility and create a checklist of Energy Efficiency (EE)/conservation measures applicable to applicant	Requires PG&E to conduct energy audit of the applicant's facility and discuss cost effective EE/demand side management (DSM) measures with applicant
Assignment of Contracts permissible only if PG&E consents in writing and the party to whom the agreement is assigned agrees in writing to be bound by the EDR agreement in all respects	Assignment of Contracts permissible only if PG&E consents in writing and the party to whom the agreement is assigned agrees in writing to be bound by the EDR agreement in all respects
EDR contracts can be renewed for one additional 5-year term	Whether or not EDR contracts can be renewed will be decided in PG&E's 2017 GRC[11]
Liquidated damages clause for customer fraud or misrepresentation	Liquidated damages clause for customer fraud or misrepresentation

4. Discussion

4.1. Positions of the Parties

LGP is the only party who fully supports PG&E's application. DRA, TURN, AReM, CCSF, EUF, MEA, SJVPA, MerMod ID and Oakland support a properly constructed EDR, but oppose the approach taken by PG&E in this application. Chief among these parties' common concerns are the 35% level of

[11] In its opening testimony, PG&E proposed that standard and enhanced EDR contracts can be renewed for one additional 5-year term. In its rebuttal PG&E said the issue would be decided in PG&E's 2017 GRC.

discount proposed for the Enhanced EDR option, PG&E's proposal to eliminate the floor price, the proposal to exempt PG&E shareholders from financial responsibility for ensuring a positive CTM from the program, the proposal to eliminate or loosen protections against free-riders, and the proposal to allow a negative distribution rate. These parties also raise concerns about the competitive neutrality of various aspects of the proposed EDR program and object to PG&E's proposal to calculate the CTM over a 10-year period for a program that lasts five years. Oakland opines that the unemployment rate of cities is a better measure of the need for the application of an Enhanced EDR than the unemployment rate of counties. DRA offers an alternative to the proposed 35% Enhanced EDR program, where the discount would decline annually and any shortfalls in CTM would be borne by PG&E shareholders.

4.2. Benefits to PG&E Ratepayers

The Commission has previously determined that EDR programs have both direct and indirect benefits to customers in the service territory. Successful Economic Development projects benefit ratepayers directly by increasing the revenues available to contribute to the utilities' fixed costs of doing business, thus lowering rates to other customers.[12] Ratepayers also benefit since offering a discount tariff rate helps to maintain or attract customers who would otherwise relocate or not come to the utilities' service territory absent the incentive. In essence, the discount rate ensures that there is a positive CTM, meaning that they are still contributing. If the customer chooses a location outside of the utilities' service territory, that contribution would be zero, thus depriving other

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[12] D.09-05-018, at 27, Finding of Fact 2.

ratepayers of the positive CTM that would have been made available from the rate offering.[13]

In addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities and improved overall local and economic vitality.[14] Local communities benefit from the economic multiplier effect, resulting from local spending by newly employed, or continuously employed, workers where the businesses locate. One of the indirect results from the strengthened economic base is the more complete use of the utilities' transmission and distribution facilities which further reduces rates.[15]

4.2.1. Direct Ratepayer Benefits of EDR Programs

Price floors have been a critical component of all EDR programs previously authorized by the Commission. These price floors have ensured that the minimum rate for any customer reflected the marginal cost of providing service plus the payment of all NBCs.

The EDR programs authorized at both PG&E and SCE by D.05-09-018 and D.10-06-015 contain an annual true-up mechanism that limits the EDR discount to ensure that revenue does not fall below a floor price. The floor price consisted of NBCs (public purpose program charges and the costs for transmission), the marginal costs of distribution, and if a bundled-service customer, marginal costs for generation. The floor price and annual true-up thus acted as an annual

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[13] D.05-09-018, at 13, 14.

[14] *Ibid*., at Finding of Fact 3.

[15] *Ibid*., at 14.

measure of the direct benefits to ratepayers of the EDR program. The floor price was based upon customer specific marginal costs, up to the otherwise applicable tariff, with unit marginal costs established at the beginning of the customer contract and remaining at that level until the end of the contract period.

While the floor price acted as an effective barrier against negative CTM, PG&E requests that the new EDR program not contain a floor price with an annual true-up and back-billing mechanism. The application asserts that "In PG&E's experience, this after-the-fact "true-up" proved unworkable for its customers, and diminished the effectiveness of the rate."[16] No party opposes the removal of the annual back-billing mechanism but all parties, except PG&E and LGP, oppose the removal of the floor price.

PG&E asserts that, "CTM is the most appropriate measure of the extent to which non-participating customers are better off as a result of added or retained sales."[17] PG&E continues to say that, "To determine the CTM associated with an additional customer, whether under the EDR program or generally, you need to consider only the generation, transmission and distribution marginal costs." PG&E agrees that NBCs cannot be discounted, but asserts that, "because NBCs do not increase to serve an additional kW or kWh, they should not be considered part of the marginal cost of service for purposes of the CTM calculation."[18]

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[16] Application, at 8.

[17] PG&E Rebuttal Testimony of Daniel Pease, at 2-1.

[18] *Ibid*., at 2-5.

PG&E's approach in its application is based upon a projection of the net-present-value (NPV) of the CTM provided by all of the EDR participants over a 10-year period.[19] As described above, PG&E proposes that the discounted tariff last for up to five years, so in essence they are doubling the time to reap the full benefits of the discount using CTM as a metric. The proposed 10-year CTM evaluation period covers the 5-year period of time that participating customers receive the rate reductions offered under the EDR program, as well as a 5-year period of time that these customers take service under the "Otherwise Applicable Tariff" beyond the rate reduction period.[20] PG&E asks that, "the Commission, in this proceeding, should judge the reasonableness of the EDR program based on a CTM evaluation, and approve rate reductions accordingly that will not be revised or changed for the duration of the EDR Program."[21]

DRA, AReM, and MerMod ID oppose the 10-year NPV program based CTM analysis due to customer attrition issues, the fact that marginal costs can change over the course of the 5-year contract (and turn positive CTM to negative CTM), and the fact that PG&E's analysis shows a number of cases in which the forecast 5-year CTM is negative.

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[19] In other words, PG&E requests that the Commission base its evaluation of positive CTM on a program wide basis, rather than on a contract by contract basis.

[20] PG&E Opening Brief, at 33.

[21] PG&E Rebuttal Testimony of Daniel Pease, at 2-4, 2-5.

LGP asserts that CTM should not be required of either the individual participant or the program generally.[22] They assert that, "in economic development terms, a healthier local economy, more jobs, more taxes, etc., benefits ratepayers as much or more than a positive contribution to margin."[23] They also assert that, "to protect the interests of ratepayers generally, the Commission simply need only ensure successful and attractive EDR options."[24] LGP further asserts that, in evaluating CTM as an element of the success of an EDR program "… where CTM *is* used, there is no reason that each and ever (sic) year has to be positive or that it must be positive for the limited life of the offer. LGP believes that if a positive CTM can be found within the likely life of the investments or the wider benefits, that matters more."[25]

4.2.2. Indirect Ratepayer Benefits of EDR Programs

The Commission has previously recognized that EDR programs produce indirect benefits. However, the Commission has not yet required PG&E to fully document these indirect benefits. PG&E's application does not contain a provision for measuring indirect benefits; no party, including the LGP,[26] provide any metrics for quantifying the value of the indirect benefits of increased employment opportunities and improved overall local and economic vitality.

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[22] LGP Direct Testimony, at 27.

[23] *Ibid*., at 17.

[24] *Ibid*., at 28, 29.

[25] LGP Rebuttal Testimony of James Renzas, at 8.

[26] Cross Examination of James Renzas, transcript, at 623.

4.3. Risks to PG&E Ratepayers and Others

Authorizing a discount tariff without proper safeguards can put non-participating customers at risk for cost overruns. These risks are identifiable. In order to ensure that we have authorized a just and reasonable rate, we mitigate the ratepayer risk exposure as much as possible.

There is a high likelihood that a participating customer will not be paying rates that provide a positive CTM, particularly at the Enhanced EDR discount rates of 35%. If there is a shortfall, PG&E has consistently stated that it "will not pursue an EDR program if shareholder funding is included as a component."[27]

Customer non-payment of NBCs is another risk that must be mitigated. However, as established in D.07-09-016, NBCs cannot be discounted. As a result of this restriction, there are fewer available places to provide the discount.

The EDR is targeting energy-intensive non-residential customers. However, with the discount, there is muted price signal and therefore a smaller incentive for the customer to become more efficient with its energy usage. This creates a ratepayer risk, since it means that in part the discount could fund energy inefficient facilities. If the facility were to undergo cost-effective energy efficiency, it would limit the total amount of subsidy needed per facility. On a subscription basis, the more efficient the facilities are, the more of them could potentially fit under the subscription cap. This is particularly relevant considering that those eligible for the discount are non-residential customers with at least 200 kW of new or existing load.

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[27] PG&E Reply to Protests, at 3.

With any discount program, there is a ratepayer risk that the discount would go to customers who do not need it. Free-riders are a risk to any program that provides discounts to qualifying customers. In PG&E's EDR program, a free-rider is a customer whose decision to close, locate, or expand facilities in PG&E's territory is not based upon the proposition that "but for" these lower rates the customer would locate, relocate or expand somewhere outside of PG&E's territory, or close.

The risk of a non-competitively neutral business environment is a critical concern for Direct Access (DA) providers, Community Choice Aggregators (CCAs), and the publicly-owned utilities (POUs) such as the MerMod ID and the SJVPA.

The risk of overly burdensome requirements for program qualification and participation are the primary concern of the LGP, because the LGP views such requirements as "job killers." The LGP is concerned that the standard EDR discount of 12% will not be sufficient to attract employers, and therefore urges our adoption of both the standard EDR discount rate of 12% and the enhanced EDR discount rate of 35%. The LGP is critical of previous Commission decisions, and asserts that since "so many ex-ante and ex-post conditions and restrictions have been placed on each EDR, there can be little surprise that, having built a concrete clad glider, the thing won't fly."[28] They also state that, "It seems as though no bad idea was left behind if it could hamper past EDR options."[29]

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[28] LGP Direct Testimony, at 32.

[29] *Ibid*., at 10.

While we do not agree with LGP's characterizations, we concur that the EDR needs to be accessible in order to be effective.

No party offered convincing evidence that the level of regulatory oversight in previous EDR programs (other than the floor price and claw-back provisions) was responsible for the failings of the programs. PG&E relies heavily upon the testimony of the LGP witness to demonstrate general and specific difficulties of doing business in California's complex energy sector regulatory environment, and the need for a change in our regulatory approach. The LGP witness' testimony convinces us that there is no need for fundamental change in our regulatory oversight of PG&E's EDR program.

In his direct testimony, the LGP witness stated that location in California is "… not an attractive prospect. Especially compared to locations that are not only clearer but also go out of their way to make location there simple and where they offer incentives without so many strings."[30] Under cross-examination, the witness affirmed his assertion that, "Texas is an example of a state that has an effective approach to economic development."[31] He affirmed that he had reviewed the Texas Enterprise Fund (TEF) application and has assisted clients in filling out the application.[32] Under further cross-examination the witness, while feebly attempting to distinguish an incentive program which provides a direct payment of cash from an EDR program that provides a direct discount on an electric bill, then admitted that the TEF application:

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30 Renzas direct testimony, at 6.

31 Transcript, at 590, 591.

32 *Ibid*., at 592.

- requires a notarized signature of the applicant attesting that the information contained in the application is true and correct;
- requires an applicant to list any entity that has a 5% ownership interest in the applicant company;
- requires the applicant to list existing jobs in all of its then existing locations;
- requires the applicant to provide a projected capital investment description;
- requires the applicant to reveal what committed sources of funding it has;
- requires the applicant to provide projected dates and milestones for the project;
- requires the applicant to provide job creation and investment schedule information;
- requires a breakdown of the types of new full-time jobs to be created by classification, title, and salary;
- requires the applicant to provide detailed financial data, including current assets, inventories, total liabilities, total equity, net income, revenue, cost of goods sold, and current accounts receivable; and,
- has a claw-back provision.[33]

Similarly, in the LGP witness' rebuttal testimony[34] regarding whether other intervenors are correct in assessing what is or is not a burden on

[33] *Ibid*., at 592-596.

[34] Renzas rebuttal testimony, at 11.

businesses[35] the witness distinguished himself from the other intervenors by stating, "Yet I have testified that these burdens and incentives are not found in competitor states' incentive packages."[36] During discovery, the LGP witness provided electronic links to several incentive programs, including the EDR for Duke Energy Indiana, Inc., Duke Energy Ohio, and Duke Energy Kentucky.[37] Under cross-examination, the witness acknowledges that all three of these Duke Energy Riders contain a provision that, "The customer must affirm that the availability of this Rider was a factor in the customer's decision to locate the new load or retain current load in the Company's service area." The witness further testifies that he did not actually know whether the affirmation was in the form of an affidavit, or whether these incentive programs had been successful.[38]

The LGP witness also stated in his rebuttal testimony that, "While intervenors might regard this as a non-issue, businesses that would need to breakdown and share details of their costs would not likely share that view." An examination of the Duke Energy Riders reveals that the applicant must breakdown and share details of their costs in order to meet the following requirements of all three Riders:

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[35] Generally speaking, and specifically as to the burdensomeness of the requirements to sign an affidavit under penalty of perjury and to demonstrate that energy costs account for 5% of business operating costs.

[36] *Ibid*., at 12.

[37] TURN Cross-Examination Exhibit # TURN-3 (LGP Response to DRA Data Request 1-7).

[38] Cross – at 541–543.

- "the customer must employ an additional workforce in the Company's service area of a minimum of twenty-five (25) full-time equivalent (FTE) employees per 1,000 kW demand of new load. Also, the customer's new or expanded load must result in capital investment of at least one million ($1,000,000) per 1,000 kW demand of new or expanded load. The employment additions and capital investment must occur following the Company's approval for service under this rider."
- "the customer's new or expanded load must result in capital investment of ten (10) million dollars ($10,000,000) per 1,000 kW demand of new or expanded load. This capital investment must occur following the Company's approval for service under this rider."
- "The customer must agree, at a minimum, to retain the current number of FTE employees." and
- "…the customer must maintain a minimum demand in accordance with the Service Agreement and maintain a monthly average of 300 hours use of demand."

4.4. Mitigating Risks in the New EDR Programs

A properly constructed EDR program can be an effective tool in improving California's economy and the employment prospects of Californians. We authorize PG&E to offer both a Standard and an Enhanced EDR option. We adopt Oakland's unopposed request[39] to make the enhanced EDR option applicable to cities where the annual unemployment rate for the previous calendar year has exceeded 125% of the state annual average. A Standard EDR option program, which provides a 12% discount for each year of the contract, will be available everywhere in PG&E's service territory, to bundled service, DA,

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[39] Oakland's January 18, 2013, Reply Brief and Parties' February 15, 2013, Responses.

and CCA customers who qualify for the program. An Enhanced EDR option program which provides at least a 12% discount, but no more than a 35% discount for each year of the contract and will be available to attraction, expansion and retention customers who qualify for the program and are located or planning to locate in cities or counties in PG&E's service territory with unemployment rates of more than 125% of the statewide average. PG&E shall annually determine the level of the Enhanced EDR discount via a CTM analysis; the discount should be given in the form of an ex-post annual refund. We also require that the EDR reduction be allocated between distribution and generation charges such that the net distribution charges paid by DA and CCA participants and similarly situated bundled participants are the same.

Key differences between this EDR program and the most recently approved EDR program are:

- We require that the Enhanced EDR discount be ex-post, calculated annually, and returned to the EDR customer as an annual refund.
- We require that the marginal costs for generation and distribution used to calculate the Enhanced EDR discount be initially set at the marginal costs established by GRC in effect at the time that the EDR contract is signed, and then adjusted annually to reflect the changes in the marginal cost of generation authorized by the Commission in its annual proceedings on PG&E's Energy Resource Recovery Account.
- We eliminate the limitation of participation to customers whose energy costs are at least 5% of operating costs.
- We require that the discount offering may commence on the date of this decision and may not extend past the date the Commission renders its decision in PG&E's 2017 GRC, Phase II.

- We require that renewal of the EDR program be decided in Phase II of PG&E's 2017 GRC.
- We require the reporting of the actual number of jobs retained or created by EDR participants.
- We require the reporting of the amount of CTM attributable to each Enhanced EDR attraction, expansion and retention participant, and the total CTM attributable to the program.

4.4.1. Minimizing Negative CTM

PG&E has made clear that it will not offer EDR discounts if the Commission requires shareholder participation in ensuring that all EDR participants (individually or collectively on a program wide basis) pay rates sufficient to ensure a contribution to margin and payment of NBCs and marginal costs.[40] All parties hope to eliminate the "claw-back" provisions of the previous Commission approved EDR programs, because it results in uncertainty to businesses and has sometimes unfairly resulted in EDR participants having to pay back part of the discount previously afforded them.

Adopting PG&E's Enhanced EDR proposal, as submitted, could likely result in non-participating ratepayers paying rates that are not just and reasonable because the rate paid by the EDR participants would likely be less than the marginal cost of receiving service, plus NBCs. The combined risk of EDR customer attrition and marginal cost changes over the course of the contract can too easily turn positive CTM to negative CTM. PG&E relies upon a theory that EDR customers will remain customers for five years after the EDR discount expires, and seeks to have us assess the level of CTM contribution by adding

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[40] Reply of PG&E to Protests and Response to Application, at 3.

together all CTM provided by all participants in both the Standard and Enhanced EDR programs.

The risks of negative CTM attendant to PG&E's Standard EDR program proposal are low. DRA projected that an EDR discount of 22% is the maximum discount that can be afforded a customer without causing negative CTM on a program-wide basis over the term of a 5-year EDR contract.[41] We conclude that, consistent with D.07-09-016, the 12% Standard EDR discount proposed by PG&E conforms with our requirement that the rates paid by the customer be reasonably expected to generate revenue sufficient to exceed the sum of distribution and generation marginal costs plus NBCs, by each EDR customer, in each year of the contract. We will therefore authorize PG&E to apply a 12% discount to the monthly bills of its qualifying Standard EDR customers.

The risks of negative CTM attendant to PG&E's 35% Enhanced EDR proposal are too high, particularly given DRA's analysis that 22% is the maximum EDR discount that can be afforded without resulting in negative CTM and PG&E's analysis that CTM for this proposed 5-year program should be measured over a 10-year period. The claw-back provision of the most recent EDR program can be avoided, and a higher degree of economic certainty can be afforded to customers and ratepayers alike, by an ex-post annual refund process for the Enhanced EDR customer. The ex-post annual refund process will result in PG&E issuing an annual refund to the affected Enhanced EDR customer in the form of a refund check or an annual bill credit. Annually updating the marginal costs used in the CTM analysis, by using the marginal costs for generation and

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[41] Direct Testimony of DRA witness, Robert Levin, at 2-13.

distribution established by the most current GRC in effect and adjusted annually to reflect the changes in the marginal cost of generation authorized by the Commission will afford the most appropriate discount to the Enhanced EDR customer while maintaining protection against negative CTM. We understand that maximizing the effectiveness of the Enhanced EDR is best accomplished by a discount that is dependable and predictable. While neither a "claw-back" nor an ex-post refund are ideal in enhancing that goal, we find that an ex-post refund will do more to protect non-participating customers and ultimately give participating customers economic relief; in order to be more transparent and to yield a higher degree of economic certainty of the Enhanced EDR, PG&E shall meet annually with the Enhanced EDR applicant and provide the customer with a good faith, but non-binding, estimate of the savings the customer can reasonably expect to receive at the end of each year. The actual discount refunded to the Enhanced EDR customer may not result in negative CTM attributable to the affected customer during the one year period upon which the discount is calculated.

4.4.2. Preventing Free-Riders

Retention customers are more likely to become free-riders than attraction or expansion customers. We are persuaded by SCE's argument that there is no need for an affidavit for attraction and expansion of customers because "the customer would not actually receive the discount unless and until the attracted or expanded load materializes."[42] Therefore, we will only require an affidavit from retention customers.

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[42] SCE Opening brief, at 4.

The LGP is the only party who asserts that we should eliminate the requirement that the CalBIS should review all applications for EDR participation. PG&E asserts that we should make review voluntary. We are not persuaded, and we continue to require the mandatory approval of EDR applications by CalBIS, now known as GO-Biz.

PG&E proposes, and LGP concurs, to remove the existing program cap of 200 MW. DRA, TURN, and MerMod ID oppose removing the cap. We agree with TURN's assertion that, "PG&E has provided no evidence that the 200 MW cap would restrict future enrollment in the EDR program." TURN continues to say that it agrees with DRA that a program cap is necessary to limit non-participating ratepayers' total exposure to risk and that a cap may also limit the number of free-riders. While there is some possibility that PG&E will have a high participation rate, we think that a programmatic cap provides a reasonable 'check-in' opportunity to review the program. PG&E should request modification of this decision if EDR enrollment approaches the 200 MW cap.

The Commission has previously required that EDR applicants declare, under penalty of perjury, that electricity makes up a threshold percentage (5%) of operating costs in order to qualify for the EDR discount. DRA, TURN, and MerMod ID are in favor of retaining this element of the EDR program, arguing that it serves to limit free-ridership and to target the program at businesses where the benefits of the EDR discount are most meaningful. We do not continue to require a threshold percentage of operating costs requirement. On balance, this requirement is unnecessarily burdensome and adds little value. We believe that the other provisions that protect against free-riders, including the threshold requirement that an EDR participant add 200 kW of new or existing load are sufficient ratepayer safeguards.

PG&E proposes to allow for the assignment of an EDR contract "only if PG&E consents in writing and the party to whom the agreement is assigned agrees in writing to be bound by the EDR agreement in all respects."[43] We disagree with DRA's assertion that we should "require the purchasers of an EDR customer company to re-apply for the EDR program and re-sign the customer affidavit,"[44] and find PG&E's proposed language sufficient to protect ratepayers.

PG&E proposes agreement language that allows the EDR participant to terminate the contract with 30-day notice. PG&E also proposes liquidated damages language for its EDR agreement that provides for 200% liquidated damages in the event of fraud or misrepresentation by the EDR participant. DRA proposes different language, but we find PG&E's proposed language to be sufficient. We therefore adopt PG&E's language since it provides an additional safeguard against free-riders and protects PG&E's non-participating customers.

4.4.3. Ensuring Competitive Neutrality

Competition between PG&E, CCAs, DA providers, POUs in general, and the MerMod ID (collectively the competitive parties) in particular, is controlled by statute.[45]

The competitive parties have provided evidence of adverse competitive impacts of the EDR program proposed here by PG&E, particularly with respect to PG&E's proposal to eliminate the floor price, the level of discount of the proposed Enhanced EDR option, PG&E's original proposal to allow distribution

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[43] PG&E Prepared Testimony, Chapter 3, Attachment A, at 3.

[44] DRA Prepared Testimony, at 3-5.

[45] Pub. Util. Code § 707(a)(4)(A) and Pub. Util. Code § 454.1 (a).

rates to go negative and the revised approach put forward in its rebuttal testimony,[46] and PG&E's proposal to treat the Power Charge Indifference Account (PCIA) charge as an NBC. None of these competitive parties has presented evidence of adverse competitive impacts of the previous EDR programs. The EDR program provisions we adopt in this decision dispense with the competitive parties objections to PG&E's plan because the program requires that all participants in the Enhanced EDR programs pay at least the marginal costs of receiving service, and requires that the EDR reductions in both the Standard and Enhanced EDR programs be allocated between distribution and generation charges such that the net distribution charges paid by DA and CCA participants and similarly situated bundled participants are the same.

4.5. Demand Side Management (DSM) Requirements

Discount tariff programs create muted conservation and energy usage price signals for the customers enrolled in the program. Such muted price signals can create a long term avoidable liability for non-participating customers. The Energy Action Plan establishes EE and Demand Response at the top of the state's loading order to fill new resources. In this instance, improved DSM practices also facilitate longer term bill savings for the participating customer and limit the amount of subsidy needed to be provided by the non-participating customer. We encourage PG&E to use the EDR as an on-ramp to achieve as much cost-effective EE and Demand Response as possible at these energy-intensive non-residential sites.

[46] PG&E Rebuttal Testimony, at 2-2, 2-3.

We observe that D.12-11-015 contemplated the use of on-bill repayment and other financing options for non-residential customers that could qualify for the EDR tariff. While we make no comment on the pilot projects contemplated in D.12-11-015, we observe that reducing upfront costs to EE through on-bill financing or repayment may help facilitate these reductions. We also observe that a potential interactive effect between the Standard EDR and repayment of these savings could maximize ratepayer value.

We note that most of the eligible customers of the Standard or Enhanced EDR will be 'custom' projects. We observe that no two facilities will be alike, and some participating customers will be more efficient than others. Since there is a varying level of baseline, we do not think it is appropriate to have a per customer requirement. For the customers enrolled in the Standard EDR tariff, we make no direct DSM reduction requirements. However, we encourage PG&E to aggressively pursue DSM at these facilities. We expect to see a 5% reduction in energy usage over the life of the Standard EDR tariff across all of the enrolled customers.

For the Enhanced EDR, as described above, PG&E will conduct an annual projection of what the discount should be for the next year and to review the full discount on an ex-post basis from the previous year's usage. We observe that in this conversation with the customer, it is perhaps an ideal time for PG&E to assess potential new ways of deploying DSM at the participating customer's facility. Therefore, during the annual Enhanced EDR review or at another appropriate time, we require PG&E to present cost-effective DSM options to the customer enrolled in the enhanced EDR. While we do not specify actions the participating customer must undergo, it is unreasonable to have the participating customer only conduct an audit and not take the cost-effective actions while still receiving discounted electricity. Since the Enhanced EDR can be up to 35% of electricity discount, it is reasonable to expect that additional EE or demand response should be deployed at the facility. Since we anticipate that each participating customer's facility will have a different baseline and potential to incorporate additional efficiency and demand response, we do not make a site-specific energy usage reduction requirement. However, across the various profiles of participating customers, there will be varying levels of cost-effective DSM potential available.

We are sympathetic to the position of LGP that additional requirements on the EDR acted as a deterrent to its enrollment. However, we think that any potential deterrence factor is outweighed by the benefits to PG&E's service territory. To provide some context, we observe that if the EDR program were to be fully subscribed at the program cap of 200 MW and if every enrolled customer participated in the Enhanced EDR tariff, this 5% reduction requirement would result only in 10 MW of reduced load. This is an extreme scenario, and we think that we have set a relatively modest goal which strikes the appropriate balance of protecting non-participating ratepayers and furthers the state's environmental and climate goals and results in a successful EDR.

Therefore, we require PG&E to achieve a 5% energy usage reduction over the life of the Enhanced EDR tariff across all of the participating Enhanced EDR customers. We do not make site-specific reduction targets, nor do we specify the proportion of reductions that should result from EE or Demand Response. We defer to PG&E to determine the best way to achieve this overall 5% energy usage reduction requirement using all cost-effective DSM programs available.

4.6. Program Performance Evaluation and Annual Reporting

The record in this proceeding would have been significantly improved by an in depth analysis of the performance of previous EDR programs. We will therefore require reporting of performance metrics that will assist us in future EDR related decision making. Three reports, containing the same performance metrics, will be required to be filed with the Director of the Energy Division. The first report will be due on March 1, 2015, and will cover the period from the date of this decision through December 31, 2014. The second report will be due March 1, 2016, and will cover the period of January 1, 2015 through December 31, 2015. The final report will be due on March 1, 2017, and will cover the period of January 1, 2016 through December 31, 2016.

Each report will contain both a confidential version and a public version. The confidential version will contain the following information, arrayed in a table format, relative to each EDR participant:

1. Name of the EDR participant;
2. The Standard Industry Code (SIC) applicable to the participant's business;
3. The total EDR discount afforded to the named EDR participant during the reporting period;
4. A listing of each job retained or created during the reporting period that is attributable to the named EDR participant's participation in the EDR program; and
5. The amount of the wage and benefits attributable during the reporting period to each job retained or created by the named EDR participant's participation in the EDR program.

The public version will contain an aggregated analysis of the information contained in the confidential report, and will provide the Commission and the public with:

1. The total amount of the annual EDR refunds given during the reporting period;
2. The average percentage of the discount given to Enhanced EDR participants during the reporting period;
3. The total number of jobs created or retained during the reporting period that are attributable to all participants in the EDR program;
4. The average salary and benefits attributable during the reporting period to all jobs retained or created by participation in the EDR program; and
5. For customers enrolled in the Enhanced EDR, the amount of EE and Demand Response achieved and in progress.

4.7. Costs of Administration

The administrative costs of implementing this EDR program will be borne by PG&E shareholders as the cost of maintaining PG&E's market share that is provided by the EDR program. The rich and expensive history of PG&E's response to competition from DA, CCA, and POU providers is the best evidence that protecting market share is of considerable value to PG&E shareholders. In Resolution E-3654, we noted that we have "consistently stated that benefits that accrue to shareholders from Flexible Pricing Options increase substantially in competitive markets."[47] In Finding 19, we determined that:

[47] Resolution E-3554, at 5.

> Under the current 100% ratepayer funded economic development program, PG&E gains strategic competitive advantages by attracting new customers and locking in sales over the long term. Once PG&E begins serving the new customer it gains the additional advantage of having been the first competitor to establish a relationship with the customer, arguably making it easier to sell additional services and placing the burden on competitors to lure the customer away from their existing provider.

In D.07-09-016, the Commission again explicitly found that EDR provide IOUs with a competitive advantage:

> EDR discounts benefit shareholders by maintaining or increasing customer base and market share. EDR price advantages assist utility efforts to compete for customers at the borders of their service territories, for example against irrigation districts that might serve existing utility customers.[48]

We see no reason to deviate from prior practice, and PG&E shareholders should bear the costs of administering EDR programs.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _________________, and reply comments were filed on ____________________ by ____________________________________.

[48] D.07-09-016, at 27.

6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Richard W. Clark is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Economic conditions in California have not substantially improved since D.10-06-015 was adopted.

2. California continues to suffer from extremely high unemployment, although unemployment rates have crept lower in the recent past.

3. The high cost of doing business in California is having a negative impact on the State's ability to attract and keep high-paying manufacturing jobs.

4. Energy costs are a key factor in where some businesses decide to locate.

5. PG&E's large-load industrial sector rates are higher than most of its major out-of-state competing utilities.

6. A properly constructed EDR program can be an effective tool in improving California's economy and the employment prospects of Californians.

7. The Commission has previously authorized EDR programs for California's electric utilities, and modified those programs, in D.05-09-018, D.06-05-042, D.07-09-016, D.07-11-052, and D.10-06-015.

8. The application asks the Commission to approve a new approach to EDR that creates higher incentives for certain customers while reducing the number of risk mitigation components of the previous EDR programs.

9. There are two generic sources of ratepayer risk associated with the EDR programs: (1) the cost of the discount itself, if the participating customer is, in fact, a free-rider; and (2) the possibility that the revenue from the customer might be insufficient to cover changes in the marginal cost over the contract term, causing the CTM to become negative.

10. PG&E repeatedly made clear that it will not offer EDR discounts if the Commission requires shareholder participation in ensuring that all EDR participants (individually or collectively on a program wide basis) pay rates sufficient to ensure a contribution to margin and payment of NBCs and marginal costs.

11. PG&E asserts that the EDR program authorized by D.10-06-015 failed to continue attracting participants because the headroom available for offering the EDR incentive has been reduced since the 2005 adoption of Schedule ED by:

- Inclusion of the NBCs, as required by D.07-09-016.
- New generation and distribution marginal costs adopted in the 2007 GRC, which were substantially higher, driven by historically-high natural gas prices, than the previous 1996 marginal costs.
- Declining generation rates - resulting in declining generation revenue and elevated generation marginal costs in the floor price.

12. PG&E's proposal to eliminate the floor price and remove various ratepayer protections does not address the three factors which PG&E alleges to be responsible for the reduction in the headroom available for offering the EDR incentive.

13. Price floors have been a critical component of all EDR programs previously authorized by the Commission.

14. Price floors have ensured that the minimum rate for any customer reflected the annual payment of the marginal cost of providing service plus the payment of all NBCs.

15. Retention customers are more likely to become free-riders than attraction or expansion customers. Retention customers will be required to sign an affidavit, under penalty of perjury, stating that but for the EDR discount they would close or relocate their facilities.

16. On balance, the mandatory review of past EDR applications by the CalBIS has been beneficial and has not been burdensome or overly time consuming.

17. Requiring the purchasers of an EDR customer company to re-apply for the EDR program and re-sign the customer affidavit is overly burdensome and provides little value in preventing free-riders.

18. A 200% liquidated damages provision is an effective deterrent to fraud and misrepresentation by retention EDR participants.

19. An initial programmatic 200 MW participation cap is effective in limiting free-ridership.

20. On balance, requiring a declaration that electricity makes up a threshold percentage of operating costs is unnecessarily burdensome and adds little value.

21. No party offered convincing evidence that the level of regulatory oversight in previous EDR programs (other than the methodology for calculating the floor price and claw-back provisions) was responsible for the failings of the programs.

22. The implementation of successful EDR programs will benefit ratepayers directly by increasing the revenues available to contribute to the utilities' fixed costs of doing business, thus lowering rates to other customers.

23. CTM is the most appropriate measure of the extent to which non-participating customers are better off as a result of added or retained states.

24. In addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities, and improved overall local and economic vitality.

25. The current application contains no provisions for measuring indirect benefits, and no party or witness provided any metrics for quantifying the value of the indirect benefits of increased employment opportunities and improved overall local and economic vitality.

26. Confidential reporting of the names of the EDR participants, their SIC, the total EDR discount afforded to the participant, the number of jobs retained or created and the amount of wage and benefits paid to each of those employees is critical in measuring the indirect benefits attributable to an EDR program.

27. The unemployment rate of cities is an equally important measure of the need for the application of an Enhanced EDR as the unemployment rate of counties.

28. The competitive parties provided evidence of adverse competitive impacts of the EDR program proposed here by PG&E.

29. None of these competitive parties presented evidence of adverse competitive impacts of the EDR programs we have previously authorized.

30. The rich and expensive history of PG&E's response to competition from the competitive parties is the best evidence that protecting market share is of considerable value to PG&E shareholders.

31. Under a 100% ratepayer funded economic development program, PG&E gains strategic competitive advantages by attracting new customers and locking in sales over the long term. Once PG&E begins serving the new customer it gains the additional advantage of having been the first competitor to establish a relationship with the customer, arguably making it easier to sell additional services and placing the burden on competitors to lure the customer away from their existing provider.

33. EDR discounts benefit shareholders by maintaining or increasing customer base and market share. EDR price advantages assist utility efforts to compete for customers at the borders of their service territories, for example against irrigation districts that might serve existing utility customers.

32. PG&E shareholders should bear the costs of administering the EDR programs.

33. Discount tariff programs create muted conservation and energy usage price signals for the customers enrolled in the program. Such muted price signals can create a long term avoidable liability for non-participating customers.

34. Improved DSM practices facilitate longer term bill savings for the participating EDR customer and limit the amount of subsidy needed to be provided by the non-participating EDR customer.

Conclusions of Law

1. Rate reductions to attract or retain business are in accord with the legislative precept to "encourage economic development," as set forth in Pub. Util. Code § 740.4.

2. PG&E's proposal to eliminate the floor price and remove various ratepayer protections presents an unacceptable level of risk of unjust and unreasonable rates for non-participating ratepayers in violation of Pub. Util. Code § 451.

3. The rate reductions and procedures requested by the applicants, as modified herein, are justified under Pub. Util. Code § 454(a).

O R D E R

IT IS ORDERED that:

1. The requests for Economic Development Rates (EDR) in Application 12-03-001, as modified by this decision, are approved and Pacific Gas and Electric Company is authorized to offer both a Standard and an Enhanced EDR tariff subject to the requirements of this decision and as set forth in Appendix A.

2. Pacific Gas and Electric Company is ordered to submit compliance filings in accordance with the program performance reporting requirements of this decision.

3. San Diego Gas & Electric Company and Southern California Edison Company are strongly encouraged to file applications that are consistent with the spirit of the economic development rate programs adopted herein.

4. Pacific Gas and Electric Company shall file tariffs consistent with the adoption of the Economic Development Rate programs, as adopted herein, within 15 days of the effective date of this decision, and agreements as they are entered into. These tariffs shall be effective subject to confirmation of compliance by the Energy Division.

5. Application 12-03-001 is closed.

This order is effective today.

Dated _____________________________, at San Francisco, California.

APPENDIX A

Standard and Enhanced Economic Development Rate Tariff Options

Standard and Enhanced Economic Development Rate Tariff Options

- PG&E is authorized to offer both a standard and an enhanced Economic Development Rate (EDR) optional tariff.
- Funding for both the standard and enhanced EDR shall be borne by non-participating commercial and industrial PG&E customers.
- A Standard Option EDR program, which provides a monthly 12% discount on the otherwise applicable tariff (OAT) for each year of the contract, will be available everywhere in PG&E's service territory, to bundled service, direct access ("DA"), and Community Choice Aggregation ("CCA") customers who qualify for the program.
- An Enhanced Option EDR program which provides at least a 12% discount, but no more than a 35% discount on the OAT for each year of the contract will be available to attraction, expansion and retention customers who qualify for the program and are located or planning to locate in cities or counties in PG&E's service territory with unemployment rates of more than 125% of the statewide average.
- The rates paid by EDR customers shall be reasonably expected to generate revenue sufficient to exceed the sum of distribution and generation marginal costs of providing service to the customer plus non-bypassable charges (NBC's),[1] by each EDR customer, in each year of the contract.

[1] NBC's include transmission charges, Public Purpose Program Charges, Nuclear Decommissioning Charges, Competition Transition Charges, New System Generation Charges, Department of Water Resources bond charges, and (for direct access and community choice aggregators only) Power Cost Indifference Adjustment charges.

- EDR reductions shall be allocated between distribution and generation charges such that the net distribution charges paid by DA/CCA participants and similarly situated bundled participants are the same.
- PG&E shall annually determine the level of the Enhanced EDR discount via a CTM analysis, and the discount should be given in the form of an ex-post annual refund.
- PG&E shall meet annually with the Enhanced EDR applicant and provide the customer with a good faith, but non-binding, estimate of the savings the customer can reasonably expect to receive at the end of each year. The actual discount refunded to the Enhanced EDR customer may not result in negative CTM attributable to the affected customer during the one year period upon which the discount is calculated.
- The marginal costs for generation and distribution used to calculate the Enhanced EDR discount shall be initially set at the marginal costs established by the general rate case (GRC) in effect at the time that the EDR contract is signed, and then adjusted annually to reflect the changes in the marginal cost of generation authorized by the Commission in its annual proceedings on PG&E's Energy Resource Recovery Account.
- Retention customers are required to sign an affidavit, under penalty of perjury, stating that but for the EDR discount they would close or relocate their facilities.
- EDR applications must be approved by PG&E and the California Office of Business Services.
- The initial programmatic participation cap is 200 MW. PG&E should request modification of this decision if EDR enrollment approaches the 200 MW cap.

- Assignment of an EDR contract is allowed only if PG&E consents in writing and the party to whom the agreement is assigned agrees in writing to be bound by the EDR agreement in all respects.
- An EDR participant may terminate its contract with 30 days written notice.
- The EDR agreement shall provide for 200% liquidated damages in the event of fraud or misrepresentation by the EDR participant.
- The EDR discount offering may commence on the date of this decision and may not extend past the date the Commission renders its decision in PG&E's 2017 GRC, Phase II.
- The renewal of the EDR program shall be decided in Phase II of PG&E's 2017 GRC.
- PG&E shall aggressively pursue demand side management at all EDR eligible facilities. PG&E shall present cost-effective Demand Side Management options to the customer enrolled in the enhanced EDR during the annual Enhanced EDR review or at another appropriate time. PG&E is encouraged to achieve a 5% energy usage reduction across all of the participating standard EDR customers over the life of the standard EDR tariff, and is required to achieve a 5% energy usage reduction over the life of the enhanced EDR tariff across all of the participating enhanced EDR customers.
- Three reports, containing the same performance metrics, are required to be filed with the Director of the Energy Division. The first report is due on March 1, 2015, and will cover the period from the date of this decision through December 31, 2014. The second report is due March 1, 2016, and will cover the period of January 1, 2015 through December 31, 2015. The final report is due on March 1, 2017, and will cover the period of January 1, 2016 through December 31, 2016. Each report shall contain both a confidential version and a public version.

- The confidential version shall contain the following information, arrayed in a table format, relative to each EDR participant:
  - Name of the EDR participant;
  - The Standard Industry Code (SIC) applicable to the participant's business;
  - The total EDR discount afforded to the named EDR participant during the reporting period;
  - A listing of each job retained or created during the reporting period that is attributable to the named EDR participant's participation in the EDR program; and,
  - The amount of the wage and benefits attributable during the reporting period to each job retained or created by the named EDR participant's participation in the EDR program.
- The public version shall contain an aggregated analysis of the information contained in the confidential report, and will provide the Commission and the public with:
  - The total amount of the annual EDR refunds given during the reporting period;
  - The average percentage of the discount given to Enhanced EDR participants during the reporting period;
  - The total number of jobs created or retained during the reporting period that are attributable to all participants in the EDR program;

  - The average salary and benefits attributable during the reporting period to all jobs retained or created by participation in the EDR program; and,
  - For customer enrolled in the enhanced EDR, the amount of Energy Efficiency and Demand Response achieved and in progress.
- The administrative costs of implementing the EDR program will be borne by PG&E shareholders.

(END OF APPENDIX A)

APPENDIX B

List of Appearances

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(END OF APPENDIX B)